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THE LIMITATION OF THE RIGHT OF APPEAL IN CRIMINAL CASES.

SHOULD the right of a man convicted of crime to have his case reviewed by a higher court be limited, and if so to what extent? The practice prevalent in this country is to allow such appeal in all instances as a matter of right, and to give the appellate court practically unlimited scope in its review. The limitation of the right which is now commonly proposed and which is suggested by the English system, is to confine the appeal to cases where the trial judge, in his discretion, reserves for review by the higher court some question of law which he considers doubtful and has decided adversely to the defendant.

The reasons urged for continuing the system of unlimited appeal are obvious and cogent. They run along two lines: first, by appeal, errors and injustice committed by the trial court may be corrected; second, through fear of appeal prosecuting attorneys and judges are made more careful to avoid error. Our sense of justice is so highly developed and our imagination so keen to depict the horrors of unjust incarceration that, as a people, we are eager to leave open to the accused every opportunity to establish a reasonable doubt as to his guilt. We consider it so possible that any judge may, on occasions, whether through error, prejudice, or ignorance, fail to give a fair trial, that we want the court's action open to the test of review before any man is irrevocably sent to jail. We so dread the consequences that might arise from cutting off the right of appeal, that the minds of most of us are not open to the suggestion.

Yet the reasons which may be advanced in favor of limiting the right are strong. First, as a preliminary consideration, it is urged that there must be a final determination somewhere. Shall it rest with a body of judges schooled more in abstract law than in human nature, studying not the living witnesses but printed records; or with a jury of twelve common men who have the flesh and blood, the tones of the voice, the flinch of the liar, the steady eye of truth under their observation? For, although in theory the appellate

courts consider chiefly questions of law, in practice they are constantly passing on the issues of fact; and, after all, the problems of law they unravel have little to do with the fundamental question of guilt or innocence. Here is suggested the second reason, namely, that the criminal appeal in practice offers not so much an opportunity for the innocent to right their wrongs as a series of technical loopholes through some of which the guilty may escape. Thirdly, the opportunity of appeal is, in practice, possible only to the few who can afford it, and is therefore denied to the great majority of men convicted. Fourthly, the appeal results in long delay — and tardy determination of a criminal prosecution is not justice. Fifthly, the total effect of appeals, on account of the doors of escape thrown open thereby to the rich and closed to the poor, and on account of the long postponement in punishment which results from them, is to increase public disrespect for the processes and results of criminal law. And finally, there is a reason which is not familiar to those not intimately acquainted with criminal trials. Under our system the People have no right to appeal. No criminal judge need ever be reversed if only he will decide all questions in favor of the defendant. Almost all prosecuting officers know what it is to have a guilty man escape because the trial judge, with his eye on his own record, has not the courage of his convictions to decide a contested point against the defendant. Thus the right of appeal opens loopholes of escape not only in the higher court, but in the trial itself, through the fear of a judge lest he be reversed.

In all the arguments thus outlined on both sides, there is weight. So far as they go they are sound. The question, for one seeking a correct conclusion, is as to the relative weight to be given them. By the limitation of appeals some assurance of certainty would be sacrificed — as something of justice and celerity is now lost by allowing them as of right. On which side lies the balance?

The question cannot be answered without a resort to experience. The actual occurrences must be studied impartially by those so situated as to be able to observe them. To give the results of such a study of conditions in New York County is the aim of this article. That county is chosen because the writer's opportunity to observe has been limited to that place. The choice is justified because the criminal business there transacted is probably more extensive and varied than the total business of most of the states.

The first set of facts attracting attention concerns the relative numerical importance of the appeal with reference to the total of all cases of conviction. It will probably come as a surprise to most readers to learn that of about eleven thousand persons found guilty on charges of felony in the New York County courts during the five years, 1898 to 1902 inclusive, not quite nine men in a thousand have had the judgment against them passed upon by an appellate court. Only in two and one-half cases in a thousand has the judgment been reversed.[1]

It is thus evident that in proportion to the total number of criminals brought to justice, the number of those who profit by the right of appeal is exceedingly small. Those who argue for the continuance of the unlimited right of appeal may urge this fact as showing that we have the safety valve with remarkably small loss: that the escape of three men in a thousand is a small price to pay for the preservation of the opportunity to have gross errors committed in a trial rectified.

On the other hand a study of the causes for the small number of appeals leads to a conclusion of very serious import. One who watches the cases as they run through the courts day by day, knows that the number of appeals is far from proportionate to the number of cases in which, to some degree of probability, error has been committed. Whether or not an appeal is taken depends very

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[1] The exact figures are interesting. The Court of General Sessions and the Criminal Term of the Supreme Court have exclusive jurisdiction of cases where indictments are found, that is, as a rule which in practice has rare exceptions, only in case of felonies. Petit larcenies, simple assaults, and almost all other misdemeanors are tried in the Court of Special Sessions. The figures here given, as in fact the whole discussion in this article, have no reference to cases coming up in Special Sessions.

During the five years, 1898 to 1902 inclusive, 11,011 indicted offenders were found guilty, 2,294 having been tried and convicted by juries, the rest having pleaded guilty. Of these judgments, 82 have as yet been reviewed by a higher court — five of which, having been affirmed in the Appellate Division, are still pending in the Court of Appeals. In addition there are thirteen other appeals pending which had not, on Jan. 1, 1904, yet been passed on by either of the higher courts. This does not include a somewhat lesser number of appeals in which notice was served, but which were abandoned.

Of the cases already decided on appeal, reversals have ultimately been secured in twenty-five. If we count in cases still pending on the first day of this year, and assume that they will be decided on the same ratio of affirmances to reversals as those disposed of, and exclude the appeals which were abandoned, we get the following results:

Percentage of appeals to persons found guilty,	.0086
Percentage of appeals to persons convicted by jury,	.041
Percentage of reversals to persons found guilty,	.0025
Percentage of reversals to persons convicted by jury,	.012

little on the chances of securing a reversal, very greatly on the ability of the convict to pay counsel fees. It costs to appeal. The expense of counsel fees is certain, and there is a large contingent cost in case of failure. A very small number of convicted persons can afford it. The figures showing the proportion of appeals come very close to showing the proportion of defendants who can afford to appeal. Thus we see that, with the exception of men indicted for murder in the first degree, where the state, in case of need, will bear the expense, the door of appeal is open to the rich man, closed to the poor. This very fact constitutes a glaring injustice. In practice the result of the right of criminal appeal is that there is one law for the rich, another for the poor.

Though, indeed, appeals be few, they so frequently occur in notorious cases that their effect on the public estimate of the administration of criminal justice is great. The esteem in which the actions of criminal courts are held is a matter of no small importance, for if punishment is to be a deterrent from crime it must be generally conceived to be swift, accurate, hard to escape, brooking no delay. Historically and in fact, the basis of criminal jurisprudence is the substitution of public punishment for private revenge. "Vengeance is mine," says the state, and the individual must allow his private grievance to be swallowed up in a theoretical injury to the people as a whole. If public justice is swift and true, the individual is content. If not, he becomes restive, anarchistic, prone to take the law into his own hands, ready in extreme cases to resort to lynch law. Consequently, if there be evils in connection with appeals, though numerically appeals are few, they are of great importance.

The first alleged evil concerns the delays incurred.

There is a general belief that justice in New York is tardy. Its slowness is almost proverbial. The facts, however, are in striking contrast with the popular notion. Careful records which have been kept by the District Attorney, during the year 1903, of the length of time required for the disposition of indictments where the defendant was kept in the City Prison and not released on bail, show a remarkable celerity in their determination. In a total of about three thousand of these prison cases the average lapse of time from the date of original arrest to final judgment, including the preliminary hearing before the magistrate, the presentation of the evidence to the Grand Jury, the finding of the indictment

and the final disposition, either by trial, plea of guilty, or discharge, was only eight days.[1]

The popular impression springs from over-emphasis of the flagrant cases. The average man knows that Molineux was acquitted of the murder of Mrs. Adams almost four years after her death; he does not know what the usual speed is. Some of these delays are due to slowness on the part of the District Attorney in bringing the case to trial. His excuse lies in the fact that he is overcrowded with somewhat more than four thousand felony cases in a year; and yet there can be no justification for such delays as sometimes occur. It is not with this cause, however, but with the delay resulting from appeals that we are here concerned.

The average amount of time which has been required, in cases arising during the five years here under discussion, to bring a judgment to a decision on review by the Appellate Division has been fourteen months. That is for cases already decided. The twelve pending cases average, in lapse of time between conviction and Jan. 1, 1904, thirty-one months. These bring the total average up to at least 16.7 months. The average time required to take a decision from the Appellate Division to the Court of Appeals, including pending cases, has been at least six and one half months. The average time required to reach a final decision on appeals in capital cases where the appeal is direct to the highest court, the Court of Appeals, has been fifteen months.

It requires no argument to show that such delay in the final determination of a criminal case is a great evil from the standpoint both of the prosecution and the defendant.

The harm of it becomes even more apparent when we consider the extreme cases. The longest capital case — that of People *v.* Molineux — required twenty months for disposition on appeal. Even worse conditions have been tolerated in the cases before the Appellate Division. In March of 1898 a man named Koerner was convicted of murder in the second degree and sentenced to imprisonment for life. In December, 1899, one Martin Regan was

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[1] Of course pleas of guilty lower the average. But a man seldom pleads guilty until sufficient evidence has been amassed by the prosecution to secure his conviction. The figures are for all prison cases, including murder cases.

Bail cases are disposed of more slowly. They compose about one fourth of the total. There are no figures available concerning them, but it is quite exceptional when they are not disposed of within three months. The effort is constantly made to try prison cases first.

convicted of the same offence and received a like sentence. Appeals in both cases are still pending, — one almost six years old, the other over four. In both cases motions made recently by the District Attorney to dismiss the appeal were denied. In January, 1897, two men, Valentine and Fender, were convicted of petit larceny under an indictment and were sentenced to six months each. They secured a stay. Seven years later the conviction was affirmed by the Appellate Division, and an appeal to the Court of Appeals is now pending. Naturally enough this case was heralded in the public press. Further examples are unnecessary. In all, during the five years in question, and not including the case last referred to, there were thirteen appeals which lasted over two years, of which five lasted over three years, one four years, and one over five.

In estimating the causes and effects of these delays it should be recollected that in New York a man convicted of crime may apply to any justice of the Supreme Court in the state, or to the trial judge, for what is known as a Certificate of Reasonable Doubt. The effect of this process is to stay the execution of sentence and in most instances to liberate the convict on bail pending appeal. In other words, if a single judge can be found anywhere in the state who can be persuaded that there is a reasonable doubt as to whether the conviction will stand on appeal, the defendant can get out on bail while awaiting action by the higher court. The certificate is granted on a reading of the record and argument of counsel, in some well-known instances on a very scant reading. Thus it not infrequently happens that the decision of a court presided over by a judge whose whole experience is in criminal law and whose whole attention for the time being was given to the case, is overruled and temporarily nullified by the decision on the record, made during odd moments, by a judge of no superior jurisdiction, whose business is entirely with civil actions, and who has had little or no experience in criminal law.

What are the results? In five years[1] there were fourteen reversals when stays were granted. In at least nineteen[2] cases where stays were granted the judgment of the trial court was affirmed. So that the percentage of cases in which the stay was justified is slightly less than forty-two and one half. That the granting of a

[1] Cases arising 1898–1902 inclusive.

[2] Possibly in a few more. The records are not such as to satisfy one of their entire accuracy on this point.

stay tends to protract the appeal is to be expected. Of the fourteen exceptional cases of delay which have been instanced, stays were granted in nine. The average duration of appeal in cases already decided has been six months longer in cases where there was a stay than where there was not. Sometimes when bail has been granted on a stay the defendant has failed to appear and bail was forfeited when the judgment was affirmed. This happened in three cases. One other result can best be indicated by example. Sam Park, the walking delegate, was sent to Sing Sing, convicted of extortion. In a few days he secured a stay and was released on bail. His release resulted in his conviction shortly after on another charge, and he went back to Sing Sing, where he is to-day. While out on bail, with his head close shaven, he led the parade on Labor Day through the streets of New York. The sight was ill calculated to increase public respect for the workings of the criminal law.

Here then, in the delays of appeal, and in the practice whereby convicts may go out on bail pending the delay, are found what must be admitted to be great evils. However, they are evils which are capable of some correction. On September 1, 1902, a law took effect in New York State requiring appeals in capital cases to be brought to a hearing within six months unless the time should be especially extended. The new rule has taken effect in three cases, reducing the average duration of appeal from fifteen to eight months. The shortest case on record during the five years under consideration had been eleven months. There seems to be no good reason why the present allowance of one year to appeal in other cases should not be cut down and the hearing forced to as prompt a determination as is now required in capital cases. The abolition of the Certificate of Reasonable Doubt would also tend to minimize delay and would do away with other abuses. It is at best an unnecessarily sentimental provision of law. Surely the privilege of having a hearing on his appeal within a few months is consideration enough to show a man who has been found guilty of crime by the unanimous verdict of twelve impartial men.

At best, however, some delay is inevitable under a system of appeals, and every such delay is to some degree an evil.

We now come to the most important and at the same time most difficult part of our investigation. What, as a matter of actual facts, of the contention that appeals set free guilty men on technical grounds rather than that they give the innocent a remedy for substantial injustice?

This must at best be largely a question of opinion. What is said here of course represents nothing more than the personal convictions of the writer.

The test which should be applied to the decisions in which new trials were granted in order to answer the question at issue, is based on the assumption that the juries were correct in their decisions on the facts before them, — an assumption, by the way, in which we have so much confidence that upon it thousands of men are yearly sent to jail and hundreds deprived of life. Assuming that the jury were right on the facts before them, was the reversal based on technical errors in the trial not affecting the vital question of guilt or innocence, or was it because of some substantial injustice?

A study of the decisions where reversals were had on cases arising during five years[1] shows that there are at least nine instances where it would probably be generally agreed that the new trial was granted in the interest of substantial justice. In two[2] the ground for reversal was that essential elements of the crime charged had not been proved in the People's case. It is not technical to hold that a man must have offended against what is the law ere he shall be imprisoned. In one instance[3] the defendant was convicted of larceny where it was held that the facts proved by the prosecution showed that there was no larceny, the relation being that of debtor and creditor. In three cases[4] corroborative evidence was lacking where the law on broad principles of common sense requires it. In the three other cases[5] evidence offered by the defendant was excluded by the trial court when it should have been admitted, and might very possibly have proved facts in the defendant's favor which would have changed the verdict: surely an injustice which makes us heartily glad that the defendants had the right to appeal!

The other sixteen cases, in varying degree, seem to justify the general opinion that men get new trials — which usually means freedom — on technical grounds, or for reasons based on an entire lack of confidence in the jury system.

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[1] 1898–1902.

[2] People *v.* Whiteman, 72 N. Y. App. Div. 90; People *v.* Hochstim, 76 N. Y. App. Div. 25.

[3] People *v.* Thomas, 83 N. Y. App. Div. 226.

[4] People *v.* Gralleranzo, 54 N. Y. App. Div. 360; People *v.* Deschessere, 69 N. Y. App. Div. 217; People *v.* Miller, 70 N. Y. App. Div. 592.

[5] People *v.* Seldner, 62 N. Y. App. Div. 357; People *v.* Cahill, 62 N. Y. App. Div. 612; People *v.* Bahr, 74 N. Y. App. Div. 117.

Three[1] of these reversals were for violations of the hearsay rule. In all of them the evidence improperly admitted had some probative value, though slight, and in all it may well be contended that if the jury are to be trusted at all as weighers of evidence they could be trusted to have discounted the hearsay so that it could have done no substantial injustice. The case in which the violation of the hearsay rule was most flagrant will suffice for illustration. The defendant[2] was indicted with others for murder. Shortly after his arrest a confession by one of his accomplices implicating the defendant was read to him, he being at the time under instructions from the police officer to say nothing. Evidence was admitted concerning this incident, including the contents of the confession. As an accusation made in defendant's presence is admissible only to show what answer he makes and as here the defendant was instructed not to answer and did not, the contents of the confession were purely hearsay and inadmissible. But what of substantial justice? In a dissenting opinion Judge Hatch makes the following comments: "No one, we think, can read this record without reaching the conclusion that the defendant was guilty." "No member of this court has a reasonable doubt of the guilt of this defendant." "The crime proved was most heinous in character, and failure to punish it would constitute a gross miscarriage of justice." "In the present case it can be safely said that the jury would have reached a like result if this statement had been entirely stricken from consideration by them." In which conclusion Judge Hatch has since been justified. Through great efforts on the part of an unusually energetic prosecutor the evidence was again collected, and without the objectionable testimony the defendant was again convicted.

Two cases were reversed because evidence was introduced of prior crimes. In one[3] the witness who gave the objectionable testimony made such a bad impression that the case against the defendant was in fact hurt rather than helped by his appearance. Of course the Appellate Division could not know this fact from the printed record. The other was the Molineux case.[4] Here the chief ground of reversal was the admission of evidence concerning

[1] People *v.* Kennedy (Murder 1st), 164 N. Y. 449; People *v.* Young (Murder 2d), 72 N. Y. App. Div. 9; People *v.* Bissert, 71 N. Y. App. Div. 118.

[2] People *v.* Young, *supra.*

[3] People *v.* Romano, 84 N. Y. App. Div. 318.

[4] 168 N. Y. 264.

a prior alleged murder, introduced on the theory that it tended to identify the defendant as the perpetrator of the crime charged in the indictment. By a vote of four to three the Court of Appeals held this evidence improper — not as lacking in logical relevancy, but as being introduced in violation of a rule of law. Later, tried with this evidence ruled out, Molineux was acquitted.

In three cases the reversal was because the higher court thought that the charge of the trial judge, while not incorrect, might have misled the jury. In two [1] of these the counsel for the defendants, who were present and alert to the impression being made by the living words, raised no objection at the time. It was left for the court above to find in the printed record a way out of the conviction. In the third [2] there was, as additional ground, a fear lest the failure to allow a question on redirect examination of one of defendant's witnesses might have caused a misapprehension. Of this case, Chief Justice Parker, in dissenting, remarks that the court was agreed, not only that the verdict was not against the weight of evidence, but thought that it was strongly supported by it. Another case,[3] akin to these, was where the conviction was of a police officer for neglect of duty. The main ground of reversal was that the charge of the trial court, while not incorrect so far as it went, was not sufficiently specific as to the defendant's duties in the premises. It is indicated in the opinion that the evidence was amply sufficient to have warranted a conviction had the charge been proper. Of course, whether or not the lack of definiteness in the charge affected the jury improperly, is a matter of pure guesswork.

In one case [4] a notorious forger, an ex-convict, was found guilty mainly on the testimony of two accomplices. Under the law, as it exists, they were held incompetent to corroborate one another. In another case [5] where corroboration was necessary it was amply produced, but some evidence introduced for the purposes of corroboration failed to prove anything. It was not stricken out, hence the reversal. If it had had any probative force it would have been admissible ; not having it, it is hard to see how failure to strike it out substantially injured the defendant. In another case [6] the de-

[1] People *v.* Schlesinger, 70 N. Y. App. Div. 199; People *v.* Cantor, 71 N. Y. App. Div. 185.

[2] People *v.* Zigouras, 163 N. Y. 250.

[3] People *v.* Glennon, 175 N. Y. 45.

[4] People *v.* O'Farrel, 175 N. Y. 323.

[5] People *v.* Swasey, 77 N. Y. App. Div. 185.

[6] People *v.* Wagner, 71 N. Y. App. Div. 399.

fendant was convicted of arson for setting fire to a building. Technical proof that the fire was of incendiary origin was carelessly omitted. This reversal may have been in the interests of substantial justice; at the same time one would think that if the testimony was sufficient to convince twelve men beyond a reasonable doubt that the defendant had set fire to the building, it must have been sufficient to justify the inference that the building was set fire to by some one. Fortunately, it was not hard to get together the witnesses on the second trial, the missing evidence was introduced, and the defendant again convicted, after the waste of much time and money.

In the four remaining cases the reversal seems to have been based on the fact that the Appellate Division did not agree with the jury in its decision on conflicting testimony. In two[1] this is avowedly the case. In two others[2] the ostensible reason for reversing was the refusal of the trial judge in the one case and failure in the other to charge that the failure of the prosecution to place in evidence a certificate of birth from a foreign country shown to be within the jurisdiction, could be considered by the jury as weighing against the People in the issue before them as to a girl's age. In both cases there was nothing to show that the certificates were properly certified so as to be admissible, and it is probable that if they had been introduced in evidence it would have been reversible error. Of one of these decisions Van Brunt, C. J., in dissenting, says:[3] "It seems to me that the reversal in this case is based upon the heavy sentence which was imposed and not upon any error contained in the record." Of these four cases it may be remarked that if there be anything in the theory that the bearing of a witness is of value in determining the weight of his testimony — and our jurisprudence is based on that theory — then the reversal of a verdict by an appellate court merely because their study of the record leads them to a different conclusion from what the jury reached as a result of seeing and hearing the witnesses, is not in the interests of justice. The jury, in a word, are more trustworthy than the higher court, on questions of fact.

It will be noticed that in the foregoing review of cases reversals

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[1] People *v.* Feldman, 77 N. Y. App. Div. 639; People *v.* O'Brien, 48 N. Y. App. Div. 66.

[2] People *v.* Ragone, 54 N. Y. App. Div. 498; People *v.* Dickerson, 58 N. Y. App. Div. 202.

[3] People *v.* Dickerson, *supra.*

on the ground of violations of the hearsay rule and the rule forbidding evidence of former crimes, have been classed as technical. The reason for this will appear more fully later. It is due to no lack of belief in those rules as, on the whole, invaluable guiding principles in the conduct of trials, but to the conviction that the error committed in allowing such evidence had no practical effect on the verdict of the jury that was substantially unjust to the defendant.

We have thus ascertained that there is basis in fact for the assertions that appeals have caused intolerable delay, that they have offered more technical loopholes for the guilty than opportunities for the innocent to correct substantial injustice, and that these opportunities and loopholes are open to the rich and closed to the poor. Serious as is the indictment against the present system of appeal which can be drawn upon these facts, we still are not convinced that the right of appeal should be cut off when we consider that, as we have likewise found, some instances have occurred where grave injustice would have been done had the right not existed. One man, unjustly convicted, is of more moment than many guilty escaping through technicalities.

The review of the reversals, however, suggests a way by which the right of appeal may be greatly limited without going so far as to run the risk of committing substantial injustice. The fundamental theory upon which the suggestion about to be made is based, is that juries can be trusted. Our whole system is based on that theory, yet we have been far from consistent in following it. There are certain errors which may be committed in the conduct of a trial which, if juries are trustworthy, we can trust the jury to correct. There are other errors which the jury cannot be supposed to correct. The present suggestion, in a word, is to limit the right of appeal to cases where error of the second sort is committed.

To specify: There is little or no danger of substantial injustice from the erroneous introduction of inadmissible testimony on behalf of the prosecution. Evidence is inadmissible on one of two grounds: either, first, because it has no logical relevancy, or, second, because, though logically probative, it is barred by some positive rule of law. Evidence of the first class is barred to save time: — it is absurd to reverse and have a new trial because of its admission. The second ground of exclusion is in reality technical because not based on principles of reasoning but on considera-

tions — good ones — of practice. Take, for instance, the two most striking examples. First, hearsay evidence, which is barred because not sanctified by oath or purified by cross examination. Logically it sometimes has value, usually very little. Suppose that some of it slips in. Under our present system we at once assume that the twelve men whom we trust with weighing all the other evidence, are incapable of properly discounting and weighing this testimony. No attack is intended on the rule. The only contention is that juries are so well acquainted with the general principle regarding hearsay evidence, that they will not give to any that is erroneously admitted any more weight at the most than it logically deserves. In so far as it has logical probative force, its consideration is a technical, and not substantial, wrong to the defendant. As a second example, evidence of former crimes is in most instances excluded. It certainly is conceded to have great logical relevancy. When a judge violates the rule and admits such evidence, is the defendant treated unjustly from a substantial and moral standpoint? Surely no one judging the defendant outside of the jury box, would be satisfied in his own conscience with his verdict did he not give due consideration to such evidence. In fact, logic is violated in favor of the defendant by enforcing the rule. Its occasional violation, therefore, works no substantial wrong.

No risk would be run in making it impossible to appeal on the ground that the verdict was against the weight of evidence because the jury is a more reliable tribunal than a higher court, so far as the facts are concerned. As for errors in judges' charges it is doubtful if, in cases where the testimony is *prima facie* sufficient to prove the crime, a verdict is ever unjustly influenced by such error. Juries do not convict unless they are convinced of moral guilt, and if the facts testified to make out a *prima facie* case of legal guilt, no wrong has been done by the verdict. So, too, any misconduct of the prosecuting attorney is more quickly detected and resented by the jury than by any higher court.

In two instances, however, error does substantial injustice which cannot be corrected by the jury. These are, first, where the uncontradicted evidence for the People does not prove a crime under the law. The conviction in such a case indicates the jury's belief that the acts charged as a crime were done by the defendant — the jury is bound by the court's ruling that those acts constitute a crime against the law. The second case is where a defendant is wrongfully prevented from introducing evidence in his own behalf.

He has not been given a fair chance to present his side of the case, and the jury are bound to consider only what he has introduced, and so cannot correct the error.

Thus we come to the suggestion that appeals from convictions be limited to cases —

1. Where it is claimed that the evidence submitted by the prosecution does not establish the crime *prima facie.*

2. Where it is claimed that material evidence offered by the defendant has been improperly excluded.

3. Where the trial judge reserves some question of law which he considers doubtful and of importance.

By so limiting the appeal most of the technical loopholes for escape would be closed and the number of appeals would be reduced. At the same time opportunity would be left to remedy any substantial injustice that is at all likely to occur. If some provision could be devised whereby in the third class mentioned the state could be made to bear the whole cost of appeal in the case of poor defendants, the greatest injustice of the present system would almost entirely disappear.

Nathan A. Smyth.